IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10044 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANISHBHAI VINODBHAI PATEL SARPANCH

Versus

THE STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10044 of 2004

MR TRILOK J PATEL for Petitioner No. 1

Mr.Gori, Asst.GOVERNMENT PLEADER for Respondent No. 1

MR DHIRENDRA MEHTA for Respondent No. 2

DS AFF.NOT FILED (N) for Respondent No. 2

MS RV ACHARYA for Respondent No. 3-4

..... for Respondent No. 5-6

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 28/09/2004

ORAL JUDGEMENT

As the notice was issued for final disposal matter is taken for final hearing today.

2. Short facts of the case are that the petitioner is the Sarpanch of Uttarsananda Gram Panchayat. It is the case of the petitioner that the budget was initially prepared, it was approved by the Gram Sabha and thereafter it was placed for approval in the meeeting of the Gram Panchayat on 24.3.04 and the same was not passed on account of certain disgruntled members of the Gram Panchayat who did not support the budget. It also appears that thereafter the budget was placed once again for approval on 31.3.04 and the same was also not passed. It may be recorded that in the meeting on 24.3.04 only 4 persons supported the budget, whereas 8 members of the Gram Panchayat opposed the budget. Even on 31.3.04 five members of the Gram Panchayat supported the budget whereas it was opposed by seven members of the Gram Panchayat. Consequently the budget was not passed and therefore notice for dissolution of the Gram Panchayat under section 253 of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Act") was issued by the Development Commissioner on the ground that the Panchayat has failed to perform its duties and has become incompetent to perform its duties. The petitioner submitted reply and when the hearing took place before the Development Commissioner and even when the order was passed by the Development Commissioner on 31.7.04 the budget was not passed and therefore the Development Commissioner found that the Panchayat has become incompetent to perform its duties and was not in a position to discharge the duties duly assigned to it under the Act and that there are no reasons expresly mentioned for not getting approval of the majority for not passing the budget and therefore ultimately the Development Commissioner passed the order for dissolution of the Gram Panchayat and the Administrator is appointed to look after the affairs of the Gram Panchayat. Petitioner, under the circumstances has approached this court challenging the order of the Development Commissioner.

3. It is the case of the petitioner that the budget thereafter has been passed on 3.8.04 with the support of four members and the other members of the Gram Panchayat did not remain present. However, it is the case of the respondent Nos 2 and 6 that when the aforesaid meeting was convened on 3.8.04 there was no communication and the

budget passed is not by way of genuine resolution. It appears that there is no dispute on the point that the resolution, dated 3.8.04 for passing of the budget is suspended by the Taluka Development Officer and the petitioner has carried the matter before the District Development Officer and the fact remains that the resolution, dated 3.8.04 for passing the budget as on today is suspended and can not be said to be in operation in the eye of law.

4. Mr.Trilok Patel, learned counsel appearing for the petitioner relied upon the decsiion of this court in case of Thasra Village Panchayat vs P.D.Vaghela and others reported in 2003(1) GLR 676 for contending that if the budget is not passed before 31.3.04 it can not be said that only on such ground the Panchayat deserves to be disallowed. He relied upon the observations made by this court in the aforesaid decision and submitted that as the budget is now passed on 3.8.04 and therefore the order passed by the Development Commissioner deserves to be quashed and set aside and the elected body of the petitioner Panchayat including the petitioner herein deserves to be reinducted in power.

5. The aforesaid contention raised on behalf of the petitioner by Mr.Trilok Patel appears to be primafacie attractive, but upon close scrutiny it appears that the observations made by this court in the case of (supra) at para 8 are as under:

> "It is required to be noted that there is no express provision in section 116 to the effect that moment the Panchayat fails to pass budget on or before 31st March of the current year, it shall stand dissolved or suspended. Therefore, so far as section 116 is concerned, it nowhere provides that moment budget is not passed within the stipulated time, it results in the automatic dissolution of a particular panchayat. It is, no doubt, true that in view of provisions of the Act of 1993, the State Govt is empowered to form an opinion about the incompetence of such Panchayat to perform its duty in case it is found that the Panchayat failed to pass the budget within the stipulated time. Accordingly, the Government is entitled to form an opinion to the effect that the Panchayat has failed to pass budget within stipulated time and, therefore, it is incompetent to perform its functions. On the basis of of forming of such an opinion , naturally powers are required to be exercised under section 253 of the

> Act for the purpose of dissolution or supercession of panchayat. However, there is nothing in section 116 to suggest that moment a particular Panchayat fails to pass the budget wtihin the stipulated time, it is required to be dissolved straightaway. It only enables the Government to form an opinion that such Panchayat is not competent to perform its function on the basis of which proceedings can be initiated under section 253 of the Act. In a given case, if a Panchayat is able to show satisfactorily that there was a genuine reason for not passing budget within stipulated time, it is always open for the State Govt to consider such ground for passing the ultimate order under section 253 of the Act."

6. If the aforesaid observations are considered, at the most, it can be said that merely because the budget is not passed within stipulated time limit, should not be a ground for disolution, but it would enable the Govt to form an opinion as to whether the Panchayat has become incompetent to perform its functions and while forming the opinion the Govt has to take into consideration as to whether there was any genuine reason for not passing the budget within stipualted time limit or there were other grounds which could be considered as valid grounds for the purpose of not passing the budget within stipulated time limit. If the matter is considered accordingly, then there is no explanation putforward on record as to why the budget could ot be passed on 24.3.04 and on 31.3.04 and the only ground which is sought to be canvassed is that certain disgruntled members did not support the budget. Even otherwise also when the budget was prepared, it was not passed by the majority, such ground can not be said to be a valid ground in the eye of law because in a democratic set up of a Gram Panchayat the members of Gram Panchayat have right to independently examine each issue at the meeting including the budget and to express the view. If the majority of the members present at the meeting did not support the budget, the consequences apparently would be that the group of the petittioner has lost the majority from amongst the members of the Gram Panchayat. Such an action is repeated when the second time it was presented on 31.3.04 and also not passed by majority. Therefore, at both the meetings, the budget could not be passed for want of majority and the majority opposed the budget. If, in a democratic set up, the budget is not passed, may be on the ground of not holding a meeting within the stipulated time limit, or for any other valid reason known to law, may stand on different footing. If the budget is not

passed on account of the majority of the members opposing the budget, it can be said to be a sufficient ground even to form the opinion that the Panchayat has become incompetent to perform its duties, the reason being that even if the budget is passed, any decision for spending any amount for development work or for incurring any expenses would not be approved at the meeting and the same would consequently result into not only creating a stalmate in the functioning of the Panchayat but may also result into a situation that the expenses are not duly approved by the general body of the Gram Panchayat. Further, question may also arise for recovering the amount, if expended or incurred without there being any proper authority or resolution of the Gram Panchayat. Therefore, if the budget is not passed on account of having lost the majority of the group of the petitioner who is Sarpanch of the Gram Panchayat, it can not be said that the Development Commissioner was wrong or the power exercised by the Development Commissioner is arbitrary or unreasonable in forrming the opinion that the Panchayat has become incompetent to perform its duties and deserves to be dissolved.

7. So far as the contention sought to be canvassed on the basis of resolution, dated 3.8.04 of passing the budget can not be accepted because the said resolution is suspended by the competent authority and as on today when the matter is being considered in the court, the fact remains that the budget can not be said to be passed by lawful resolution of the gram Panchayat. Further, as observed earlier, there are only 12 affected persons who participated at the meeting of the gram Panchayat and upon query from the court the statement is made at the Bar and for which there is no dispute that in all there are 21 elected members in the Gram Panchayat including the Sarpanch and out of 21 members, five members have resigned and four persons have ceased to be the members of the Gram Panchayat and therefore there are only 12 members who can validly participate at the meeting and amongst the group of 12 members, the petitioner is having support of 5 members and the group opposing the budget and opposing the group of the petitioner is having support of 7 members of the Gram Panchayat. If such a situation is considered, then also the resolution which is passed on 3.8.04 at the meeting with the support of 4 members of the Gram Panchayat can not be considered, for the purpose of taking view that the budget is validly passed as on today when the matter is considered by this court.

8. In view of the aforesaid, petition fails and

hence dismissd. Rule is diascharged. Considering the facts and circumstances of the case there shall be no costs.

28.9.04 (JAYANT PATEL,J)